PRODUCT LIABILITY/Punitive Damage Cap at Twice CEO Pay

SUBJECT: **Product Liability Fairness Act . . . H.R. 956. Gorton motion to table the Harkin amendment No. 749 to the Coverdell/Dole substitute amendment No. 690, as amended, to the Gorton substitute amendment No. 596, as amended.**

ACTION: MOTION TO TABLE AGREED TO, 78-20

SYNOPSIS: As passed by the House, H.R. 956, the Product Liability Fairness Act, will establish uniform Federal and State civil litigation standards for product liability cases and other civil cases, including medical malpractice actions.

The Gorton substitute amendment, as amended, would amend product liability law in Federal and State actions by abolishing the doctrine of joint liability for noneconomic damages, creating a consistent standard for the award of punitive damages and limiting such damages, and requiring the disclosure of attorney fees (see vote No. 135). It would also reform medical malpractice liability laws (see vote Nos. 137-144), provide sanctions for frivolous suits (see vote No. 136), and cap punitive damage awards in civil cases affecting commerce (see vote No. 146).

The Coverdell/Dole substitute, as amended (see vote No. 156), would restore the language of the Gorton substitute as it was introduced with the following exceptions:

- punitive damage awards in product liability cases could not exceed the greater of 2 times the sum of economic and noneconomic losses or $250,000 (see vote Nos. 139, 145, and 146 for related debate); however, a court could exceed this limit if it deemed appropriate, in which case the defendant could demand a new trial on punitive damages;
- a punitive damage award in a product liability action could not exceed the lesser of $250,000 or 2 times the sum of economic and noneconomic losses if assessed against: a business, organization, or government with fewer than 25 employees; or an individual with a net worth of less than $500,000; and
- either a plaintiff or a defendant in a product liability action could suggest within 60 days of an initial complaint that alternative dispute resolution procedures in a State be used to resolve the complaint, and the opposing party would have to accept or reject the offer within 10 days.

(See other side)

YEAS (78)

Republicans (51 or 96%)		Democrats (27 or 60%)
Abraham	Helms	Biden
Ashcroft	Hutchison	Bingaman
Bennett	Inhofe	Bradley
Bond	Jeffords	Breaux
Brown	Kassebaum	Bryan
Burns	Kempthorne	Dodd
Campbell	Kyl	Exon
Chafee	Lott	Feingold
Coats	Lugar	Feinstein
Cochran	Mack	Ford
Cohen	McCain	Glenn
Coverdell	McConnell	Graham
Craig	Murkowski	Heflin
D'Amato	Nickles	Johnston
DeWine	Packwood	Kerrey
Dole	Pressler	Kerry
Domenici	Roth	Kohl
Faircloth	Santorum	Lautenberg
Frist	Simpson	Moseley-Braun
Gorton	Smith	Moynihan
Gramm	Snowe	Murray
Grams	Specter	Nunn
Grassley	Stevens	Pell
Gregg	Thomas	Pryor
Hatfield	Thompson	Robb
	Thurmond	Rockefeller
		Simon

NAYS (20)

Republicans (2 or 4%)	Democrats (18 or 40%)
Hatch	Akaka
Shelby	Baucus
	Boxer
	Bumpers
	Byrd
	Conrad
	Daschle
	Dorgan
	Harkin
	Hollings
	Inouye
	Kennedy
	Leahy
	Levin
	Mikulski
	Reid
	Sarbanes
	Wellstone

NOT VOTING (2)

Republicans (1)	Democrats (1)
Warner-[2]	Lieberman-[4]

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

The Harkin amendment to the Coverdell/Dole amendment would change the punitive damage cap formula. It would provide that the limit would be the greater of $250,000, 2 times compensatory losses, or, for businesses, organizations, or governments with more than 25 employees, 2 times the average salary of the chief executive officer (or the equivalent employee) for the previous 3 years.

Debate was limited by unanimous consent. Following debate, Senator Gorton moved to table the Harkin amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: The Coverdell/Dole amendment, as amended, was not open to further amendments, but the Senate agreed to consider the Harkin amendment by unanimous consent.

Those favoring the motion to table contended:

The Senators supporting this amendment do not seem to understand the punitive damages provision in the substitute amendment. There is no $250,000 damage cap, as they allege; that number was added to increase the punitive damage awards that may be given in cases in which actual losses, both economic and noneconomic, are minor. In most cases, punitive damages will be limited to twice such losses. Thus, if $4 million is awarded for pain and suffering, and $1 million is awarded for economic losses, than a $10 million punitive award may be given. If, on the other hand, $100 is awarded for pain and suffering, and no economic losses are suffered, instead of limiting punitive damages to $200 they will be limited to $250,000. Of course, as the substitute amendment now stands, no limit will be binding; judges will be allowed to increase awards above the limits. The only effect of the Harkin amendment would be to increase the amount that people with minor losses could collect if the products they were injured by were made by companies with highly compensated chief executive officers (CEOs). For example, a person with a $100 pain and suffering award could then receive $20 million in punitive damages if he or she was injured by a product from a company that paid its CEO $10 million per year. This ridiculous result is precisely the type of result we are attempting to avoid with the punitive damage provisions in the substitute. We do not want a civil justice lottery system in which some plaintiffs with very minor injuries can hit the jackpot by being given absolutely enormous punitive damage awards. "Punishment" in a civil justice system is problematic enough without any requirement that the punishment bear at least some relation to the level of harm that has been caused. We do not favor continuing the lottery civil justice system for companies that have highly compensated CEOs any more than we do for other companies. We therefore urge Senators to table the Harkin amendment.

Those opposing the motion to table contended:

Punitive damage awards in product liability cases are intended to punish a manufacturer for its conduct and to discourage it from engaging in the same behavior in the future. To be effective, they must be set at a high enough level that they actually hurt a company. In the substitute amendment before us, the maximum punitive damage that may be awarded in some instances will be $250,000. For a company that pays its chief executive officer (CEO) millions of dollars per year a punishment of $250,000 will not be very painful, and thus will not be very effective. It should be possible in such cases to award higher punitive damage awards. Accordingly, we have proposed the Harkin amendment. The amendment would allow punitive awards to be based on CEO compensation. A plaintiff would be entitled to receive a punitive damage award up to the greater of twice the CEO's compensation, $250,000, or twice his or her compensatory losses. We think the Harkin amendment is necessary to make certain that punitive damage awards do not lose their effectiveness. We trust our colleagues agree, and will consequently join us in opposing the motion to table.